IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 990 OF 2002

Madhukar Khanderao Pansare .. Appellant

versus

The State of Maharashtra .. Respondents

...

Mr.Pratap Patil for the appellant.

Mr.A.M. Shringarpure for the respondents.

**CORAM : V.M. KANADE, J**

**DATED : 14th September 2004.**

**ORAL JUDGEMENT:-**

1. The appellant is challenging the judgement and order passed by 1st Adhoc Addl.Sessions Judge in Sessions Case no.103 of 2002 dated 17th August 2002. The accused was convicted by the trial Court u/s.304 I of the IPC and was sentenced to suffer RI for 7 years and to pay fine of Rs.500/- and in default to suffer RI for a period of two months. The

prosecution case is that on 19th October 2001, the accused committed murder of his wife Dagubai at about 4.30 p.m. by assaulting her on her head with a Shovel.

2. The prosecution case is that the accused married the deceased two years before the alleged incident and out of the said marriage, one child Vikas was born who was about 4 years of age when the incident in question took place. The prosecution case is that the deceased Dagubai had been assaulted in the past in the year 1991 by the accused and a prosecution was launched u/s.498 of the IPC against the accused. The deceased had thereafter left the house of the accused and had stayed with her parents and had filed a matrimonial Petition in Sinnar Court. Thereafter, there was a compromise between husband and wife and on the assurance given by the accused, deceased returned to the matrimonial house.

3. On 19th October 2001, the deceased was not well and that she was taking medical treatment and doctor had caller her again at about 4.00 to 4.30 p.m. At that time, the accused demanded the deceased to serve him food. However, the deceased

expressed her inability and told him that she had to go to the Doctor for medical treatment. This infiliated the accused, who took up a Shovel and inflicted two blows by means of the Shovel on the head of the deceased and as a result of the said blow, the deceased died instantaneously on the spot. The accused thereafter approached the police chowky and reported the matter to the police. The accused was taken to the site of the offence. Complaint was lodged. The trial Court convicted the accused u/s.304 I of the IPC and sentenced him to suffer RI for 7 years.

4. The prosecution examined PW no.1 Dr.More who has stated in his evidence that he found four external injuries on the body of the deceased viz.

1. CLW over left side frontal region fracture of the frontal bone 11 x 3 cm deep.

2. CLW over left parital region 8 cm x 3 cms.

3. Right side frontal region:

i) CLW 2 x 1 cms.
ii) CLW 4 x 2 cms.

4. Right side partial region 7 x 2 cms.

He stated that the injuries were sufficient in the ordinary course of nature to cause death and were possible by a blow from the blunt side of a Shovel which was article no.4. Internally, there was a fracture of the skull and there was laceration of the vein from the left side. The blood stained clothes of the accused were also sent to the Chemical Analyser and they were seized under a panchnama Exhibit-24. The Shovel was also seized under panchnama Exhibit-13. The human hair stuck to the Shovel were also sent to the Chemical Analyser. The prosecution thus examined in all 8 witnesses including the child witness PW no.3 who has also stated in categorical terms that his father had given two blows on the head of his mother. PW no.3 Vikas Pansare in his evidence has stated that his father had given a blow with the Shovel on the forehead of his mother. This witness showed the spot where the blow was given which was just above the left eyebrow. PW no.4 Shivaji Kakad was the brother of the deceased Dagubai has stated the Dagubai had not married with the accused for 12 years before the date on which he had given deposition and that prior to the marriage with Dagubai, the accused had married one other lady from whom he had two sons and two daughters and that his first wife had earlier died on account of

the burning. He has stated about the ill-treatment given to Dagubai by the accused and he has stated that on the date of the incident, he had gone to the house of his sister when he found that she was there and she was informed that the accused had killed her. The prosecution has also examined the panch witnesses and other independent witnesses who have deposed that the accused had come to the police chowky along with a small son. PW no.7 Ashok Gadge has then stated that the accused told him that he had quarrel with his wife and he had hit her with a Shovel.

5. In my view, there is sufficient evidence on record to implicate the accused in the commission of the said offence. The trial Court has therefore, correctly come to the conclusion that the prosecution had proved the case beyond reasonable doubt. The trial Court has rightly observed that the report of the Chemical Analyser at Exhibit-28 clearly showed that the blood stains found on the Shovel belong to blood group "O" which was the blood group of the deceased and that the hair that were found stuck to the Shovel resembled with the sample of the hair that was extracted from the head of the dead body at the time of the post mortem. Thus, the ocular evidence

has been corroborated by the medical evidence and also by the Chemical Analyser's report. Though it is true that ordinarily, the evidence of a child witness has to be considered with extra care and caution, this particular case, the child witness PW no.3 has given a clear account about the incident which transpired on the said date. The statement of this witness has been recorded on the very next day. Thus, in my view, the findings of the trial Court will have to be confirmed.

6. Appeal accordingly, is dismissed.

V.M.KANADE, J